

### **REMARKS/ARGUMENTS**

This paper is responsive to the Office Action mailed 12 December 2006 in the instant application. At the outset, Applicant gratefully acknowledges the indication of allowable subject matter in claims 10, 20 and 21. Applicant further gratefully acknowledges the withdrawal of rejections over Tanaka, Doko, and Ishio, and the implicit recognition that the claims are not anticipated by Nakamura.

### **Amendments to the Claims**

In view of the Examiner's above-noted comments, claims 10, 20 and 21 are amended into independent form, including the features of their respective underlying base claims, and any intervening claims. Claim 22 is amended to depend from claim 21. The amendment to claim 22 is supported throughout the original specification as filed, for example at p. 5, lines 5-12, among other places. No new matter has been added.

Claims 24-29 are newly presented. These new claims each depend, either directly or indirectly, from independent claim 21, which has been indicated as allowable. The subject matter of these claims is supported in the original disclosure of claims 14-19. No new matter has been added.

Claim 1 is amended to include the subject matter of claim 4, and claim 4 has been cancelled. This amendment finds support in the original specification, for example at p. 3, line 25, and p. 5, lines 11-12, and also in claim 21. Where the powder is not completely alloyed, as described in the specification, it is apparent to one of ordinary skill that the brazing sheet has "a structure of sintered powder." Therefore, no new matter has been added.

### **Rejection under 35 USC §102**

Claims 1, 4, 7-9, 11, 14-19, 22 and 23 are rejected under 35 USC §102 (e) as anticipated by U.S. Patent Application Publication No. 2006/0027625 by Dockus, et al. (hereinafter, “Dockus”). Applicant respectfully traverses the rejection.

Applicant refers to the Response to Arguments at p. 4-5 of the most recent Office Action, which quotes from the MPEP stating “the structure implied by the process steps should be considered in assessing the patentability of product-by-process claims over the prior art, *especially where... the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.*” (emphasis supplied in Office Action)

The Office Action further states at page 4 “[I]t is not clear how this nonspecific texture difference substantially alters, the use, function or material properties of the brazing sheet.” Drawing the Examiner’s attention to present Figs. 4 through 7, the texture which Applicant referred to in the previous response was not a surface texture as suggested by the Office Action at page 4, but a three dimensional material texture derived from the powder metal components being in a mixed state and not in a completely alloyed state, as described and illustrated in the present specification. This three-dimensional texture cannot be found in the foil or substrate-based products of the cited references, nor can it be mischaracterized as a surface texture merely because both the claimed product and the product of the applied reference are passed through rolls. Moreover for clarification, the present specification describes, beginning at page 6, line 21, and continuing through page 8, line 16, that production of a brazing by sheet powder roll compaction where the powders remain in a mixed state and not a completely alloyed

state, as recited in claim 1 for example, results in an increasing degree of flexibility and improved handling properties of the resulting product.

Therefore, the three-dimensional texture and mixed state of the composition metal powders of the claimed product are derived from its formation method of powder roll compaction, as recited in the claims. Its material properties are disclosed in the specification. The structure imparted by the claimed formation process must be considered in assessing the patentability, as the Office Action itself acknowledges.

Notwithstanding and without prejudice to the foregoing, independent claim 1 is amended to recite that the claimed brazing sheet has a structure of a sintered powder of at least two or more types of powders, the two or more types of powders being not completely alloyed and in a mixed state. Such structure is not present in the cited prior art references.

Turning specifically to Dockus, the cited portion of the reference discloses that a powder metal mixture can be applied to aluminum containing substrate as a coating either using a binder, by roll compaction into the substrate surface, or as a perform (sic, preform). Dockus clearly contemplates a fully alloyed aluminum-containing substrate, and neither teaches nor suggests a brazing sheet in which the constituent metal powders are in a mixed state and not completely alloyed. Therefore, the brazing sheet disclosed by Dockus is materially and structurally different than the brazing sheet recited in independent claim 1.

Moreover, in contrast to the recited claims, in the product disclosed in Dockus, the flexibility of the sheet and the controllability of the thickness are dependent upon the properties of the core substrate material. On the other hand, as the product recited in the

present claims has a structure of sintered powder that is not completely alloyed. The claimed product exhibits far superior sheet flexibility and controllability of the sheet thickness. Therefore, the claims are distinguished over Dockus.

Dependent claims 7-9 each depend, either directly or indirectly, from independent claims 1. These dependent claims are each separately patentable, but are offered as patentable for least the same reasons as their underlying independent base claims which are incorporated by reference. Applicant respectfully submits that the rejection over Dockus has been overcome, and kindly requests favorable reconsideration and withdrawal.

### **Rejections under 35 USC §103**

Claims 1, 4, 7, 8 and 23 are rejected under 35 USC § 103 (a) as obvious over U.S. Patent 5,547,517 to Iwai (hereinafter, "Iwai"). This rejection is premised upon the statement "[T]he method of forming the sheet does not further limit the structure, composition or function of said sheet... There do no appear to be any particular structural, compositional or functional limitations imparted by the method of forming." However, to the contrary, the instant specification makes clear that the recited method of forming does materially affect the structure and properties of the claimed brazing sheet. Moreover, the brazing sheet disclosed in Iwai, like Dockus, includes a solid core (1) with a layer of powder metal coating (2). By contrast, the brazing sheet recited in claim 1 is formed from a powder of a brazing filler metal composition into a sheet shape by powder roll compaction, wherein the powder of the brazing filler metal composition is not completely alloyed and in a mixed state in the brazing sheet.

As discussed above with reference to in Dockus, according to Iwai, the flexibility of the sheet and the controllability of the thickness are dependent upon the properties of the core substrate material. On the other hand, as the product recited in the present claims has a structure of sintered powder that is not completely alloyed. The claimed product exhibits far superior sheet flexibility and controllability of the sheet thickness. Therefore, the claims are distinguished over Iwai.

Claims 1, 4, 6, 7, 9 and 23 are rejected under 35 USC § 103 (a) as obvious over U.S. Patent 4,923,100 to Nakamura (hereinafter, "Nakamura"). The Office Action explicitly admits that Nakamura contains no teaching or suggestion of forming the sheet by role compaction. It has been held by the courts that in order to establish a *prima facie* case of obviousness, there must be some suggestion or motivation to modify the references. *See, In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). The absence of such a suggestion is dispositive in an obviousness determination. *See, Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997). "The showing of a motivation ... must be clear and particular, and it must be supported by actual evidence." *Teleflex, Inc. v. Ficosa North American Corp.*, 299 F.3d 1313, 63 USPQ2d 1374 (Fed. Cir. 2002) (Citing *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999)). Therefore, in view of the total lack of any teaching or suggestion to modify Nakamura, Applicant respectfully submits that the rejection has been poorly taken.

Moreover, this rejection is also premised upon the statement "[T]here do no appear to be any particular structural, compositional or functional limitations imparted by the method of forming." However, and to the contrary, the instant specification makes

clear that he recited method of forming does materially affect the structure and properties of the claimed brazing sheet.

As discussed above with reference to in Dockus and Iwai, according to Nakamura, the flexibility of the sheet and the controllability of the thickness are dependent upon the properties of the core substrate material. On the other hand, as the product recited in the present claims has a structure of sintered powder that is not completely alloyed. The claimed product exhibits far superior sheet flexibility and controllability of the sheet thickness.

Therefore, the brazing sheet recited by claim 1 is patentably distinguished over Nakamura. Claims 6, 7 and 9 are each separately patentable, but are submitted as patentable for at least the same reasons as independent claim 1, upon which they depend.

### **Conclusion**

In light of the foregoing, Applicant respectfully submits that all rejections have been overcome, and kindly solicits an early and favorable notice of allowability.

Respectfully submitted,

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